

EXHIBIT 39

KITCHEN WINNERS, NY., INC. -v- ROCK FINTEK, LLC
Michael Mortorano on 11/10/2023

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 SOUTHERN DISTRICT OF NEW YORK
4

5 KITCHEN WINNERS, NY, INC. DEPOSITION OF:
6 Plaintiff, MICHAEL MORTORANO
7 -v- 22-cv-05276-PAE
8 ROCK FINTEK, LLC,
9 Defendant.

10

11

12 T R A N S C R I P T of the Stenographic notes
13 of the deposition in the above-entitled matter, said
14 deposition being taken by and before MARY ANN FICSOR,
15 a Certified Court Reporter and Notary Public of the
16 State of New Jersey, License No. XI01952, AS ALL
17 PARTIES AGREE TO CONNECT REMOTELY THROUGH ZOOM
18 MEETINGS, on Friday, November 10, 2023, commencing at
19 1:40 in the afternoon.

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1 A P P E A R A N C E S:

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BOB CALVERT, New York Notary

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I N D E X

2

3 WITNESS

4

5 MICHAEL MORTORANO

6 Examination by Ms. Riddle: 4, 40

7 Examination by Frisch: 37

8

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10

E X H I B I T S

12

13	NUMBER	DESCRIPTION	PAGE
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14	1	JNS Invoice Dated 4/16/21	7
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15	2	Photograph - IMG0794	9
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16	3	Photograph	10
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17	4	E-mail Dated 2/10/21	14
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18	5	E-mail Dated 2/10/21	17
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19	6	Inbound Tally	19
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20	7	Inbound Tally	22
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21	8	E-mail Dated 4/6/21 with	
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22		Attachments	25
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23			
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24	9	Photograph	34
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1 M I C H A E L M O R T O R A N O ,
2 335 Harding Avenue,
3 Lyndhurst, New Jersey 07071,
4 having been duly sworn by the Notary,
5 testified under oath as follows:

6

7 EXAMINATION BY MS. RIDDLE:

8 Q. Hello, Mr. Mortorano.

9 Thank you for dealing with all of
10 that.

11 A. You're welcome.

12 Q. Have you ever been deposed before?

13 A. Um, yes.

14 Q. So I'm just going to go through a few
15 ground rules, which I'm sure you already know since
16 you've been deposed before.

17 But our court reporter here is taking
18 down everything we say. So it's important that we
19 not speak at the same time, and it's important that
20 you give verbal responses versus shaking your head.

21 I ask that you wait until I finish my
22 question until you respond. And I will, ideally, not
23 talk over you.

24 If you don't understand a question,
25 please tell me and I will try to rephrase that. If

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1 you answer, I will assume that you understood.

2 Although I assume that we're going
3 to be fairly brief today, if you do need a break,
4 I'd just ask that you wait until you've already
5 answered the question, and then we can take the
6 break.

7 A. Okay.

8 Q. Do you understand that you're under
9 oath and must tell the truth subject to penalties of
10 perjury?

11 A. Yes, I do.

12 Q. Have you taken any medications, drugs
13 or alcohol that would affect your ability to testify
14 truthfully?

15 A. No, I haven't.

16 Q. Any reason that you know of that you
17 can't testify accurately today?

18 A. None that I know of.

19 Q. Okay.

20 Where do you currently work?

21 A. Avrio Logistics. A-v-r-i-o.

22 Q. What does Avrio Logistics do?

23 A. We are a -- we do warehouses. We do
24 e-commerce fulfillment.

25 We handle -- you know, we are a freight

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1 forwarder.

2 Q. Are you the owner of Avrio?

3 A. Yes, I am.

4 Q. And how long have you been working --
5 how long has Avrio been in this business?

6 A. About 11 years.

7 Q. And did you work in a similar field
8 before that?

9 Sorry? I didn't hear you.

10 A. I said, "Yes."

11 Q. Okay.

12 And how long have you been working in
13 this field?

14 A. About 50 years.

15 Q. Was Joel Stern ever a client of
16 yours?

17 A. Well, he became -- we did work for him as a
18 customer.

19 Q. I'm sorry. I used the wrong phrasing.
20 So he was a customer of yours?

21 A. That's correct, yes.

22 Q. Okay.

23 What services did you provide?

24 A. We -- we received containers of gloves that --
25 OSHA containers that came into our facility.

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1 We unloaded the OSHA containers, we
2 took the boxes, we put them on pallets. And we --
3 and then we -- we stored the pallets until they were
4 shipped out.

5 Q. So when you said earlier "handling
6 freight", is that what you did for him?"

7 A. What we call it, "handling freight",
8 yeah.

9 Q. Okay.
10 And you've been working in the handling
11 freight field for quite some time?

12 A. Yes.

13 Q. Okay.
14 I am going to introduce our first
15 exhibit.

16 MS. RIDDLE: So, hopefully, this works.

17 Q. Can you see anything on your screen
18 right now?

19 (Discussion off the record.)

20 (Exhibit 1, JNS Invoice Dated 4/16/21,
21 is received and marked for identification by the
22 reporter.)

23 Q. Okay.
24 Can you see when I scroll, Michael?

25 A. Yes, I do.

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1 Q. Okay.

2 So I'm just going to scroll through
3 this briefly for you.

4 Is this something that Avrio creates in
5 the normal course of business?

6 A. Yes.

7 Q. Okay.

8 And can you describe this to me?

9 A. It's a -- it's an invoice of services
10 performed for -- you know, on containers being picked
11 up.

12 You know, stripping the containers and
13 palletizing it and shipping it out.

14 Q. Okay.

15 I'm going to direct you to Page Four of
16 this. I'll scroll there.

17 And it says right here: "Provide and
18 print labels."

19 Do you have any understanding of what
20 that means?

21 A. We probably put a label on each pallet.

22 Q. Okay.

23 And then, on the next page, it says:
24 "Provide and print labels again."

25 Do you have any understanding of what

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1 **that means?**

2 **Is that different?**

3 A. What happened is that, if you notice, this 48
4 labels is 48 pallets.

5 So, we would have put a label on each
6 pallet.

7 **Q. Okay.**

8 MS. RIDDLE: I am going to close this
9 exhibit and move on to the next one.

10 THE WITNESS: Should I hit "okay"?

11 MS. RIDDLE: No. Oh, you might have
12 to.

13 I'm not, actually, sure what is on your
14 screen.

15 But I am about to upload another
16 exhibit.

17 (Exhibit 2, Photograph, IMG0794, is
18 received and marked for identification by the
19 reporter.)

20 MS. RIDDLE: Let's go off the record.

21 (Brief recess taken.)

22 **Q. Okay.**

23 **Do you see my screen?**

24 A. Yes, I do.

25 **Q. Okay.**

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1 Do you -- I can't really zoom in on
2 this.

3 But do you see this little sticker at
4 the bottom --

5 A. Yes.

6 Q. -- of the glove?

7 A. Yes.

8 Q. And is that a sticker that you were
9 asked to print?

10 A. No.

11 Q. Okay.

12 MS. RIDDLE: I'm going go to stop my
13 share for a minute, and I'm going to show you one
14 more photo.

15 (Exhibit 3, Photograph, is received and
16 marked for identification by the reporter.)

17 MS. RIDDLE: Okay. I'm sharing my
18 screen again.

19 Q. The piece of paper -- can you see my
20 screen?

21 A. Yes, I do.

22 Q. That piece of paper that says:
23 "Joel Stern" on the top, is that something that you
24 were asked to print?

25 A. I believe that's what we printed, because that

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1 probably went on the pallet.

2 Because Joel Stern is the customer.

3 That T-R-H-U is the container number.

4 **Q. Okay.**

5 **And, then, where does that "Synthetic**
6 **Nitrile Examination" come from?**

7 A. That's probably -- that's the name from the
8 boxes, what they are.

9 **Q. Okay. All right.**

10 MS. RIDDLE: I'm going to stop my
11 screen share.

12 **Q. Okay.**

13 **So back to that -- the invoice.**

14 **So, you were asked to print labels.**

15 **Can you explain that a little bit**
16 **further, if you have any memory of that?**

17 A. What, normally, you do is -- you know, when
18 you strip a container, you put -- we call it
19 "palletize it".

20 You take the cartons, and you put it on
21 an a wooden pallet by -- so, you know, it fits on the
22 pallet.

23 And then you shrink wrap it and you put
24 plastic around it so it doesn't move.

25 And then you put a piece of paper on it

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1 describing what's on the pallet. So it's easier to,
2 you know, move -- you know, to move around.

3 And, that way, you know, when you ship
4 it out, you have some sort of ID before you ship it
5 out of what it is.

6 So you usually put some sort of label
7 on each pallet with what's on that pallet.

8 **Q. Okay.**

9 **And how do you know what's on each**
10 **pallet?**

11 A. Well, usually, you put a label on it, and then
12 you usually handwrite how many cartons are on the
13 pallet.

14 You know, using a marker on a piece of
15 plastic or on a piece of paper -- you know, we call
16 it a "block and tier".

17 So -- and I'm just making up an
18 example. Say it's a block of four with a tier of
19 seven, so that would be 28 cartons on the pallet.

20 So it should be marked somewhere, you
21 know, how many cartons are on the pallet.

22 **Q. Okay.**

23 **So walk me through this process a**
24 **little bit. Because, obviously, I don't work in this**
25 **field.**

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1 So something comes into Avrio.

2 What happens next? For example, for
3 the services that you did for Joel Stern, walk me
4 through that.

5 A. Okay.

6 What happened -- okay. The container
7 came in. We stripped -- we unloaded the container.
8 Then we built pallets. Each pallet got the same
9 amount of cartons on them.

10 We then put shrink wrap. Shrink wrap
11 is a plastic you put around it so that the cartons
12 don't fall off. We put a label on the carton that
13 tells you what's on the carton -- what's there.
14 That's what that thing says.

15 The control was, you put a container
16 number on; and then, also, marked there is --
17 probably was a number on the pallet that says
18 Pallet One, Pallet Two, Pallet Three, and then you
19 mark somewhere how many cartons are on the pallet.

20 So when you ship out, you ship out
21 by -- okay.

22 You ship out by -- you know, depending
23 on the instructions from the customer, you know:
24 "Are you shipping out the full pallet with the
25 certain cartons on it?"

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1 Or: "Are you going to break the pallet
2 and not ship out the whole pallet?"

3 So, you know, I believe, on this
4 situation, everything was shipped out by full
5 pallets.

6 You know, when we -- when they sold it
7 to the buyer.

8 Q. Okay.

9 I'm going to show you another exhibit.

10 MS. RIDDLE: And this is a PDF.

11 So, hopefully, this goes easier. Who
12 knows.

13 (Exhibit 4, E-mail Dated 2/10/21, is
14 received and marked for identification by the
15 reporter.)

16 Q. Okay.

17 Do you see that on your screen?

18 A. Not yet, no -- hold on.

19 Q. Maybe you have to say "okay".

20 A. I don't see it here.

21 Q. It wouldn't be on the screen share like
22 the last two images. It would be like, maybe, in the
23 exhibit panel.

24 Do you see anything?

25 A. No.

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1 MS. RIDDLE: We can go off the record
2 for a minute.

3 (Discussion off the record.)

4 MS. RIDDLE: Okay. Back on the
5 record.

6 Q. Okay.

7 A. How many boxes is mixed packages, and how much
8 were you charged to repackage them?

9 Q. Yes. Do you have -- so, one question.
10 Do you know who Dawn Alston is?

11 A. Yeah. He used to work for me. He was the
12 operations manager. He retired.

13 Q. Okay.

14 And, in Number Two, do you have any
15 idea as to what Mr. Stern was asking for?

16 A. I can only -- I can only make an educated
17 guess that he wanted to -- I mean, I guess -- I mean,
18 I know I was a part of the conversation.

19 Unless in the -- you know, there was
20 different boxes in the master carton.

21 In the picture you sent --
22 I'm sorry. Go ahead, Lauren.

23 Q. Oh, no. I interrupted you.
24 Please, keep going.

25 A. Okay.

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1 So what happened was, in the picture
2 you sent me was an individual box of 100 -- I believe
3 that was a box of 100 gloves.

4 And there's so many of those boxes in
5 each of the master cartons.

6 Q. Okay.

7 And when you say a "master carton", do
8 you mean what came in?

9 I'm --

10 A. Yes.

11 Q. Okay.

12 A. Because when we unloaded it, we put the
13 cartons -- in those cartons are individual boxes of
14 gloves.

15 I think those are boxes of 100 gloves
16 there.

17 Q. Okay. So --

18 A. So there's probably -- again, if you showed me
19 a picture of a master carton, I can tell you how many
20 are in there.

21 But there's probably 20 of those in
22 each carton or so.

23 Q. Okay.

24 And do you have any memory of if

25 Avrio assisted Mr. Stern with this request?

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1 A. If you had -- the only way -- if you saw an
2 invoice with us charging for something like that, we
3 would have done it.

4 But, without an invoice -- and you have
5 all the invoices, and the invoices you're showing
6 doesn't show any of that happening.

7 Q. Let me show you my next exhibit.

8 (Exhibit 5, E-mail Dated 2/10/21, is
9 received and marked for identification by the
10 reporter.)

11 Q. Okay.

12 So this is -- you should be able to see
13 this now.

14 It's a February 11, 2021 e-mail.

15 A. Yes.

16 Q. And it says: "Please see the attached
17 invoice."

18 And there is an invoice here, and it
19 says: "Extra labor, palletize and shrink wrap and
20 sort."

21 Would that be what was discussed in
22 Exhibit 4, the mixed packaging?

23 Do you want me to make anything bigger
24 for you?

25 A. No. I'm just looking through it and trying to

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1 sort through this.

2 Q. Okay. Take your time.

3 A. I would think what happened was that we had to
4 take the cartons, and they had to resort it from
5 different pallets because they were mixed SKUs,
6 maybe. Different SKU item numbers.

7 So it appeared that something was wrong
8 with the way the freight came in. The SKUs were off,
9 or we had to change it -- or we had to change the
10 SKUs around on the pallets.

11 Q. And when you say a "SKU", can you
12 describe that?

13 A. A SKU is -- each item -- each different item
14 has a SKU.

15 Q. Okay.

16 A. So what you do is, when you build a pallet,
17 you usually build it with one item on a pallet.

18 So it appears on this invoice that
19 something had to be changed around to fix. You have
20 sorting -- you have to sort 41 pallets. You have to
21 shrink wrap it.

22 Q. Great. Okay.

23 Oh, I forgot to ask you.

24 Is this something in your regular
25 course of business that Avrio would do for a

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1 client?

2 A. Yes.

3 Q. Okay. I'm going to close that exhibit.

4 (Exhibit 6, Inbound Tally Dated
5 2/11/21, is received and marked for identification by
6 the reporter.)

7 MS. RIDDLE: Are we on Exhibit 6?

8 THE COURT REPORTER: Yes.

9 MS. RIDDLE: Okay. This is an inbound
10 tally. It's attached to an e-mail dated February 11,
11 2021.

12 Okay. I'm going to publish it.

13 Q. Okay.

14 Do you see this e-mail?

15 A. Yes.

16 Q. Okay.

17 So it looks like it says, "Inbound
18 Tally" at the top.

19 A. It says: "Here is the POD."

20 Q. Okay.

21 Who is a "POD"?

22 A. A Proof of Delivery.

23 Q. Okay.

24 Now let's scroll to the attachment on
25 this.

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1 A. Can you turn that around?

2 Q. Yeah, I'm going to try.

3 (Discussion off the record.)

4 MS. RIDDLE: Okay. Back on the record.

5 Here we go.

6 Q. Okay.

7 Michael, can you explain what this
8 is?

9 A. Yes. This is a -- this is what we call a
10 "Tally Sheet" for when we strip a container.

11 So at the top you have the container
12 number, you have the date; and, obviously, it's very
13 interesting. Because you had quantity expected of
14 300 nitro gloves, of smalls. But when you stripped
15 it, there was 422 on it.

16 Okay?

17 So that means that the -- when we
18 stripped it, it didn't match the documents telling us
19 what was -- you know, what was on it.

20 And, then, when you're showing the 56
21 and everything like that, that's probably the -- how
22 many they put -- how they built the pallets on, to
23 put on each pallet.

24 Okay. Hold on. One, two, three, four,
25 five, six.

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1 **Q. And this --**

2 A. And then the next one has 1,200 gloves,
3 medium.

4 But you see what happened? It was only
5 952. It wasn't 1,100 (sic).

6 Then you have the 1,200 that we
7 stripped and only had 458. Right?

8 And this container is really messed up.
9 300 turned out to be 1,116.

10 But all of the documents were wrong
11 that we were given.

12 What happened was, this container --
13 when it came in, there was a manifest that told you
14 what was on the container. And you could see that,
15 whatever the manifest was, was totally wrong.

16 **Q. And how do you know what the manifest**
17 **was?**

18 **Is that on the left?**

19 A. Yeah. What happened -- no.

20 Well, that is our tally sheet. We got
21 that information from the OSHA Bill of Lading, what
22 was on it.

23 So that information on the left was
24 supplied to us, okay?

25 And on the right is, actually, what was

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1 on the container.

2 See the variation?

3 Q. Yes.

4 And this tally, is this something that
5 Avrio normally does?

6 A. It's a huge -- it's a huge variation.

7 Q. And is this -- I interrupted you.

8 I'm sorry.

9 Is this something that Avrio Logistics
10 creates in their regular course of business?

11 A. Yes. Because, obviously, the customer wants a
12 proper inventory of what they have.

13 And we have to report this to them so
14 that, you know, they know what their merchandise is
15 that they are getting.

16 Q. Okay.

17 A. I mean, you know, this is -- this tally sheet
18 is -- you could see how much variation there is from
19 what they thought was on it.

20 Q. Okay.

21 I'm getting rid of that one, and I'm
22 going to show you another one.

23 MS. RIDDLE: Okay. I believe this is
24 Exhibit 7.

25 (Exhibit 7, Inbound Tally Dated

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1 2/11/21, is received and marked for identification by
2 the reporter.)

3 MS. RIDDLE: This another tally sheet.

4 Q. Okay.

5 This is attached to another e-mail.

6 And, as you can see on your screen, it is

7 February 11, 2021, and now it's 3 p.m.

8 And Dawn is asking Joel to call him
9 and -- oh, here we go.

10 MS. RIDDLE: I'm going to have to do it
11 again.

12 Q. Okay.

13 Can you tell me about this Inbound
14 Tally?

15 A. You didn't rotate it yet.

16 Q. Oh, it rotated on my screen.

17 A. Oh, sorry.

18 Q. Did it work yet --

19 MS. RIDDLE: Off the record.)

20 (Discussion off the record.)

21 Q. Let me know when you can see it.

22 A. I see it, yes.

23 Q. And is it the right way?

24 A. I'm sorry.

25 What is the question?

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1 Q. Can you walk me through this Inbound
2 Tally like you did the last one?

3 A. Okay.

4 It shows it was supposed to have 800
5 smalls on the container, and it had 178 smalls.

6 It was supposed to have 1,200 mediums,
7 but only had 450 mediums.

8 It was supposed to have 1,200 larges,
9 but only had 1,051 larges.

10 Supposed to have 800 extra larges, but
11 had 988 extra larges.

12 I don't know what the mixed inspection
13 was for 333. I can't answer what that is. You know,
14 because there's no size next to it.

15 We built 59 pallets on that.

16 Q. Okay.

17 And who is this signed by?

18 Can you tell me?

19 A. That's -- probably one of the dockworkers
20 signed it.

21 Q. Okay.

22 A. He's a worker.

23 Q. Okay.

24 And is this something -- similar to the
25 last one, this is something that Avrio makes in the

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1 normal course of business?

2 A. Yes. Yeah.

3 Q. Okay.

4 Why does it say "Caravan Inc."?

5 What is that?

6 A. Caravan. Caravan is the name -- is the actual
7 warehouse.

8 Q. What does that mean?

9 A. What happened was, is that, Avrio Logistics
10 uses Caravan's warehouse to do the work.

11 Q. I see.

12 So this was created by Avrio Logistics,
13 but it was at a Caravan warehouse?

14 A. Yes.

15 Q. Okay.

16 That answers my question on that, so
17 okay.

18 MS. RIDDLE: All right. This is going
19 to be Exhibit 8.

20 (Exhibit 8, E-mail with Attachments,
21 Dated 4/6/21, is received and marked for
22 identification by the reporter.)

23 MS. RIDDLE: It looks like an April 6,
24 2021 e-mail with some attachments.

25 Q. Okay.

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1 Do you see the exhibit I put up on your
2 screen?

3 A. Yes.

4 Q. Okay.

5 Do you need me to zoom in?

6 A. Let me just read it first.

7 Okay.

8 Now, what is your question?

9 Q. Okay.

10 So I'm going to move on to some pages.

11 I just wanted to show you the front page.

12 Okay.

13 So it looks like Mr. Stern is
14 forwarding you something.

15 Can you explain why he would be
16 forwarding you these, if you know?

17 The first one looks to be a bill of
18 lading.

19 A. Well, we have to -- that is something that we
20 need in the normal course of business.

21 Q. Okay.

22 A. It's the container coming in. You have the
23 exporter in China. He is the consignee, right,
24 Kitchen Winners Company.

25 Q. Okay.

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1 And what is "consignee"?

2 A. The consignee is who it's going to.

3 Q. Okay.

4 And then you said -- I think
5 interrupted you?

6 A. Okay.

7 So it shows you the vessel that it came
8 in on, where it came out of China. It came to Port
9 of Discharge, that's Port of New York.

10 It has the forwarding agent on it who
11 handled the documentation coming into this country,
12 which would be the customhouse broker, clear customs.

13 And it has the marks on the boxes
14 that -- the boxes have to have Med Car on the outside
15 of the master carton. There's 3,000 cartons on the
16 container.

17 And there's a description of what it
18 is. It says: "Nonsterile powder free synthetic
19 nitro protection gloves."

20 That is what they told US Customs what
21 was on the container.

22 Q. Okay.

23 So this -- and then the next page
24 is --

25 A. Okay.

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1 And then you have a weight on the
2 container, on the cube of the container.

3 Q. Okay.

4 Is there anything else on this page?

5 I'm going to move on to the next page.

6 What is this?

7 A. The packing list is what's supposed to be in
8 the container.

9 Q. And is that something you normally
10 receive?

11 A. Yes.

12 Q. And is that what you use to make the
13 right side of the Inbound Tallies?

14 A. Well, that's what is on the left side. That's
15 what we're told is on the container.

16 And then, after you strip the
17 container, we verify that data to see if it's the
18 same.

19 Q. Okay.

20 So, just to clarify, because I got the
21 left and right wrong.

22 A packing list is used for the left
23 side of your Inbound Tally, and that is what you
24 think is going to be on that container.

25 Correct?

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1 A. Yes.

2 Q. Okay.

3 A. And this container has --

4 Q. And who made this?

5 A. The shipper would make this.

6 Q. Okay.

7 A. Yes. In the normal course of business --
8 because -- the reasons for this are, A, this has to
9 all be presented to customs to bring shipments into
10 the United States.

11 And there's -- you know, you would be
12 fined for giving, you know, wrong information to
13 US Customs. Okay?

14 Which, it has to tell you the quantity
15 and an accurate description of the goods.

16 And then, obviously, the -- you want an
17 accurate count. Because the person who bought the
18 goods is paying for the goods based on the accurate
19 description of the goods.

20 So, you know, which includes a proper
21 counting of the goods.

22 Q. And what happens normally at Avrio when
23 the numbers don't match, like they did here?

24 A. We normally -- we report it immediately to our
25 customer, so they know the situation.

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1 **Q. And then what happens?**

2 A. Well, I mean, they -- you know, a count is a
3 count.

4 So, you know, we give the information,
5 and then they just -- they decide if there's
6 something we should do differently with the
7 merchandise or -- you know, it's their responsibility
8 to contact their -- their person they purchase from.

9 Because, you know, if they are short,
10 then they've overpaid for something. Or, you know,
11 that's something between the customer -- you know,
12 our customer and the person they bought it from. You
13 know, we're here just to -- you know, to give the
14 proper count and make any report if some purchase
15 came in damaged.

16 So we take pictures if there's
17 something wrong with the freight when it comes in.

18 **Q. So, shifting back here.**

19 Up here, on the Bill of Lading, you
20 read earlier that this is a nitrile protection glove,
21 according to the Bill of Lading.

22 **Correct?**

23 A. Well, the description on the Bill of Lading
24 said: "Nonsterile powder-free synthetic nitrile
25 protection glove."

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1 That's what they described it to us
2 as.

3 Q. Okay.

4 And then, on here, they say, "Nitrile
5 examination gloves."

6 Right?

7 Do you see the highlighted part?

8 Maybe I can make it bigger.

9 A. I see the packing list.

10 Q. Yes.

11 And do you see how it says: "Nitrile
12 examination"?

13 A. Yes, I do.

14 Q. Okay.

15 And do you have any understanding of
16 why the Bill of Lading would be different than the
17 packing list?

18 A. They should be. They should be the same.

19 Q. Okay.

20 I'm just going to scroll through this
21 and look for more packing lists.

22 A. The one that is the most important is the
23 Bill of Lading.

24 Because that's the one you are giving
25 to US Customs.

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1 Q. And, so, the packing list doesn't go to
2 US Customs.

3 It just goes straight to you?

4 A. I can't answer that question, because -- the
5 person that could probably answer that properly would
6 be the custom broker -- the person who could answer
7 that question properly would be the customs broker.

8 Q. Okay.

9 And it continues, and then it looks
10 like we have another Bill of Lading.

11 So, maybe, two things came in?

12 Would that make sense? Would that
13 describe the two different Bills of Lading?

14 A. Well, you have multiple Bills of Lading,
15 because the -- because there's multiple containers
16 coming in.

17 Q. Okay.

18 I think that answers my questions on
19 that.

20 Well, I think I ran through all of my
21 exhibits, so I just have a few more questions for you
22 and then I'll open it to the other Counsel.

23 Was Kitchen Winners ever a client of
24 yours?

25 A. Well, the client was Joel Stern, and we built

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1 his company.

2 That's who I understand to be the
3 client.

4 Q. And did you work separately with
5 Kitchen Winners?

6 A. I don't think I can answer that question. I
7 mean, the invoices you have -- who did we bill, JNS
8 or something?

9 Q. Okay. I'm sorry. Keep going.
10 I interrupt you in the middle of a
11 sentence?

12 A. Lauren, we dealt with -- Joel was our
13 customer.

14 And, then, he told us what customer to
15 bill.

16 Q. I see. And the company that you built
17 was JNS?

18 A. JNS, yes. That's what the invoices show.

19 Q. Okay.

20 I actually have just a few more photos
21 that I wanted to show you that I didn't get to show
22 you earlier, I think of the whole pallet.

23 Let me just share my screen, because
24 it's an image.

25 MS. RIDDLE: Would this be Exhibit 9?

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1 (Exhibit 9, Photograph, is received and
2 marked for identification by the reporter.)

3 Q. Okay.

4 Can you see this on your screen?

5 A. Yes.

6 Q. And do you know if this is your
7 warehouse?

8 A. Hold on one second.

9 I can't really --

10 Q. When we were talking earlier and you
11 said something about, like, a larger pallet and then
12 you shrink wrapped it, is this what you were
13 describing?

14 A. Yes. I mean, that's pretty much industry
15 standard. We have what they call block and tier.

16 You see how you have the same amount of
17 cartons on each tier, and then you put the shrink
18 wrap around it to keep it from moving.

19 If I could see that -- the label on the
20 top, right-hand corner, I could tell more.

21 Can you make that larger?

22 Q. Let me see if I can zoom in for you.

23 Can you see it? Can you see me
24 zooming?

25 A. Yeah, I see you zooming. I'm trying to think.

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1 **Q. Yeah. And it's a little fuzzy.**

2 A. That's good. That's good. Hold on. Hold on.

3 I don't know what that label is.

4 That's why I'm having trouble -- to answer your

5 question, I don't know if that's our warehouse or

6 not.

7 **Q. Okay. Is it normal --**

8 A. Actually, I have my vice-president of sales

9 next to me. Hold on.

10 MS. RIDDLE: Yes, I'm sorry. We can't

11 have anyone answering the questions but you.

12 (Discussion off the record.)

13 A. Okay.

14 So, Lauren, I can't answer that

15 question if that's the same warehouse.

16 **Q. Okay. Okay. I think I'm no longer**
17 **sharing my screen.**

18 **Is that right? I can't see my screen?**

19 MS. HEDEL: Correct.

20 **Q. Okay.**

21 MS. RIDDLE: Can we just take a brief
22 break?

23 I believe I'm done. I just want to run
24 through my notes.

25 (Brief recess taken.)

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1 Q. Okay.

2 Sir, your client was Joel Stern and

3 JNS.

4 That's your understanding?

5 A. Well, Joel Stern was the person who we -- Dawn
6 had communications with.

7 Q. Okay.

8 A. You know, I mean, you have a copy of the --
9 you know, we're told who to bill.

10 So I can't answer who the client is.
11 It could be anybody that does the bill.

12 Q. Okay. I see.

13 So you have no memory of if Kitchen
14 Winners was a separate client of yours?

15 A. It would only be a separate client if we build
16 them.

17 Q. Okay.

18 And you have no memory of that, one way
19 or the other?

20 A. No.

21 Q. Okay.

22 And do you know if Hershey Weiner
23 (phonetic) was a client of yours?

24 A. That name is not familiar to me.

25 Q. Okay.

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1 MS. RIDDLE: I think those are all of
2 my questions.

3 Thank you for your time. I'm going to
4 let the attorneys see if they have any questions for
5 you.

6 MR. FRISCH: I have about five
7 questions.

8

9 EXAMINATION BY MR. FRISCH:

10 Q. When you talked about palletizing the
11 boxes, were you the one who did the work?

12 A. Well, we -- well, Avrio Logistics performed
13 the work, yes.

14 Q. So you are not the one, personally, who
15 did it.

16 Correct?

17 A. No. I'm not the dock -- I'm not the person on
18 the dock, no.

19 Q. Understood.

20 So how do you know what was done?

21 Just by looking at the documents which
22 were put in front of you?

23 A. Yes.

24 Q. Okay.

25 But you have no personal recollection

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1 of these events?

2 Or do you?

3 A. Well, when you say "personal recollection", I
4 saw the freight. I saw the freight being palletized.
5 I saw the freight being shrink wrapped.

6 Yeah, I have a general knowledge of
7 what happened. I wasn't the person who specifically
8 stripped the containers and put every box on the
9 pallet, no.

10 Q. When you put the labels on the
11 containers, who told you what to write on those
12 labels?

13 A. Well, someone had to instruct us to do it.

14 Q. Okay.

15 Do you know who instructed you to do
16 it?

17 A. No.

18 Q. Okay.

19 And you said that the labels had a
20 container number.

21 Is it certain that all of the boxes
22 that were in a pallet came from that container?

23 A. Yes. That -- when we strip -- we strip one
24 container at a time. We put that container frame on
25 a pallet.

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1 And we mark the pallet. We don't mix
2 container numbers.

3 Q. In some of the -- I think she showed
4 you a photo of a pallet with a label that said
5 "Kitchen Winners."

6 Do you know who instructed you to write
7 "Kitchen Winners" on that pallet?

8 A. I don't know if that's our pallet.

9 Q. Okay.
10 You mentioned marking of the number of
11 boxes.

12 Did any of her pictures show those
13 markings?

14 A. I'm sorry. I don't understand the question.

15 Q. You mentioned that you had marked a
16 number of boxes within the pallets somewhere on the
17 shrink wrapping.

18 Correct?

19 A. I said that we normally put the amount of
20 boxes on -- some sort of notation how many boxes are
21 in a pallet.

22 Q. And on any of the exhibits that you
23 were shown, did you see any such marking?

24 Like, where would we --

25 A. You only showed me one pallet.

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1 Q. Okay.

2 I don't have control over those
3 exhibits, so I can't show them to you again.

4 But did you see it on those?

5 A. No.

6 Q. All right.

7 MR. FRISCH: All right.

8 Thank you very much. That's all I
9 have.

10 MR. SPERBER: I have no questions.

11 MS. RIDDLE: I just have one followup
12 based on those questions.

13

14 CONTINUED EXAMINATION BY MS. RIDDLE:

15 Q. Based on the e-mails that I've showed
16 you and then the invoices, is it your understanding
17 that Joel Stern asked you to print out the things for
18 the pallets, the papers?

19 MR. FRISCH: Objection.

20 THE WITNESS: I'm sorry.

21 Do you want me to answer that question?

22 Q. Yes, you still can answer.

23 A. I mean, we would have -- okay.

24 The customer -- you know, the customer
25 instructs us what to do.

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1 So it would make -- it would make sense
2 that Joel would tell us what to do, right?

3 You know, with regards to not only
4 putting what the -- what to put on the pallet, but
5 even how high to make the pallets.

6 So I'm not saying -- whether it was
7 Joel, or it had to be somebody who worked for the
8 customer who told us what to do.

9 You know, obviously, we are in the
10 service business. We don't do things without being
11 told what to do.

12 Q. Okay.

13 MS. RIDDLE: I think that answers all
14 of my questions.

15 THE COURT REPORTER: Avram, are you
16 purchasing the transcript?

17 MR. FRISCH: No.

18 THE COURT REPORTER: Alex?

19 MR. SPERBER: No.

20 THE COURT REPORTER: Thank you.

21 (Concluded at 2:49 p.m.)

22

23

24

25

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1 C E R T I F I C A T E

2 I, MARY ANN FICSOR, a Notary
3 Public and Certified Court Reporter of the State of
4 New Jersey, do hereby certify that prior to the
5 commencement of the examination the witness was duly
6 sworn by me to testify the truth, the whole truth and
7 nothing but the truth.

8 I DO FURTHER CERTIFY that the
9 foregoing is a true and accurate transcript of the
10 testimony as taken stenographically by and before me
11 at the time, place and on the date hereinbefore set
12 forth, to the best of my ability.

13 I DO FURTHER CERTIFY that I am
14 neither a relative nor employee nor attorney nor
15 counsel of any of the parties to this action, and
16 that I am neither a relative nor employee of such
17 attorney or counsel, and that I am not financially
18 interested in the action.

19

20

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22

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24

25

MARY ANN FICSOR
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